Antelope Valley
Air Quality Management District

Draft
Staff Report

Proposed Amendment of
Rule 315 – *Federal Clean Air Act Section 185 Penalty*

For adoption on
September 20, 2011

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I. PURPOSE OF STAFF REPORT

A staff report serves several discrete purposes. Its primary purpose is to provide a summary and background material to the members of the Governing Board. This allows the members of the Governing Board to be fully informed before making any required decision. It also provides the documentation necessary for the Governing Board to make any findings, which are required by law to be made prior to the approval or adoption of a document. In addition, a staff report ensures that the correct procedures and proper documentation for approval or adoption of a document have been performed. Finally, the staff report provides evidence for defense against legal challenges regarding the propriety of the approval or adoption of the document.

II. EXECUTIVE SUMMARY

The Antelope Valley Air Quality Management District (AVAQMD) originally adopted Rule 315 – *Federal Clean Air Act Section 185 Penalty* on February 15, 2011. The AVAQMD submitted Rule 315 to the California Air Resources Board (CARB) on March 3, 2011 requesting inclusion in the State Implementation Plan (SIP), and CARB submitted Rule 315 to the United States Environmental Protection Agency (USEPA) on April 22, 2011 as a revision to the State Implementation Plan (SIP). USEPA made a finding of completeness on May 19, 2011, which reset the sanction clock, but not the Federal Implementation Plan (FIP) clock. The AVAQMD is now amending Rule 315 to include additional provisions at the request of USEPA to make the rule approvable and eliminate the possibility of sanctions as well as a FIP.

Rule 315 was adopted to implement a mandatory penalty pursuant to Section 185 of the Federal Clean Air Act (42 U.S.C. §7511d) within the AVAQMD portion of the Southeast Desert Modified Air Quality Maintenance Area (AQMA). 42 U.S.C. 7511d (Federal Clean Air Act Section 185, or Section 185) requires the imposition of a penalty of $5,000 per ton (adjusted for inflation) on major facilities within ozone non-attainment areas that fail to meet the severe or extreme ozone attainment date unless such major facilities have reduced their ozone precursor emissions by twenty percent (20%) from a baseline amount. The jurisdiction of the AVAQMD is located entirely within the AQMA which failed to meet the one-hour ozone standard on or before 2007. Therefore the AVAQMD is subject to the provisions of Section 185. The USEPA made a finding of a failure to submit a rule implementing the penalty provisions of Section 185 on January 5, 2010 (75 FR 232) which started a SIP 18 month sanction clock. Potential sanctions include an increase in the new source review offset ratio and suspension of federal highway transportation funding. Rule 315 was designed to implement the provisions of Section 185 and to stop the sanction clock upon approval of the submission by USEPA. The submission of Rule 315 was found to be complete by USEPA, which stopped the sanction clock, but not the FIP clock. Under a FIP, USEPA, not the state, determines what steps must be taken to implement Section 185. For the FIP clock to be turned off, USEPA must approve the SIP within 24 months of publishing the finding of the rule as not approvable.

The AVAQMD is now amending Rule 315 to include a non-attainment area fee equivalency strategy, as provided by Section 172(e) of the Federal Clean Air Act. Section 172(e) allows for alternative programs that are no less stringent than the mandated Section 185 program. Under USEPA guidance, such programs may be either "fee equivalent" or "emissions equivalent" or a combination of both strategies. This rule amendment proposes a "fee equivalent" program which will recognize funding from fee programs that are surplus to the SIP and are used for air quality improvement projects in the AVAQMD. USEPA guidance requires fees collected under such program be directed towards the reduction of Oxides of Nitrogen (NO_x) or Volatile Organic Compounds (VOC) emissions. Such funds will be accumulated into a fee equivalency "tracking account" and used to offset the burden otherwise required under the Section 185 penalty collection approach. This "fee equivalency" approach must be used to facilitate pollution reduction efforts, whereas the Federal Clean Air Act does not specify how Section 185 penalty revenues are to be used. Therefore, this "fee equivalent" strategy will have a greater potential for an air quality benefit than the Section 185 penalty.

III. STAFF RECOMMENDATION

Staff recommends that the Governing Board of the AVAQMD adopt, after conducting a public hearing, a resolution approving the amendment of Rule 315 – *Federal Clean Air Act Section 185 Penalty*. The proposed amendment of Rule 315 is necessary to implement the requirements of Section 185 of the Federal Clean Air Act, and to stop potential sanctions being imposed by the USEPA as identified in 75 FR 232, January 5, 2010, through the adoption of a non-attainment area fee equivalency strategy.

IV. LEGAL REQUIREMENTS CHECKLIST

The findings and analysis as indicated below are required for the procedurally correct amendment of Rule 315 – *Federal Clean Air Act Section 185 Penalty*. Each item is discussed, if applicable, in Section V below. Copies of documents are included in the appropriate Appendix.

FINDINGS REQUIRED FOR RULES & REGULATIONS

X Necessity

X Authority

X Clarity

X Consistency

X Non-duplication

X Reference

X Public Notice & Comment

X Public Hearing

REQUIREMENTS FOR STATE IMPLEMENTATION PLAN SUBMISSION (SIP):

X Public Notice & Comment

X Availability of Document

X Notice to Specified Entities (State, Air Districts, USEPA, Other States)

X Public Hearing

X Legal Authority to adopt and implement the document.

X Applicable State laws and regulations were followed.

ELEMENTS OF A FEDERAL SUBMISSION

X Elements as set forth in applicable Federal law or regulations.

CALIFORNIA ENVIRONMENTAL QUALITY ACT REQUIREMENTS (CEQA):

N/A Ministerial Action

X Exemption

N/A Negative Declaration

N/A Environmental Impact Report

X Appropriate findings, if necessary.

X Public Notice & Comment

SUPPLEMENTAL ENVIRONMENTAL ANALYSIS (RULES & REGULATIONS ONLY):

X Environmental impacts of compliance.

N/A Mitigation of impacts.

N/A Alternative methods of compliance.

OTHER:

X Written analysis of existing air pollution control requirements

N/A Economic Analysis

X Public Review

V. DISCUSSION OF LEGAL REQUIREMENTS

A. REQUIRED ELEMENTS/FINDINGS

This section discusses the State of California statutory requirements that apply to the proposed amendment of Rule 315. These are actions, that need to be performed, and/or information, that must be provided in order to amend the rule in a procedurally correct manner.

1. State Findings Required for Adoption of Rules & Regulations:

Before adopting, amending, or repealing a rule or regulation, the AVAQMD Governing Board is required to make findings of necessity, authority, clarity, consistency, non-duplication, and reference based upon relevant information presented at the hearing. The information below is provided to assist the AVAQMD Governing Board in making these findings.

a. Necessity:

The proposed amendment of Rule 315 is necessary to implement the requirements of Section 185 of the Federal Clean Air Act, and to stop potential sanctions being imposed by the USEPA as identified in 75 FR 232, January 5, 2010, through the adoption of a non-attainment area fee equivalency strategy.

b. Authority:

AVAQMD has the authority pursuant to California Health and Safety Code (H&S Code) §40702 to adopt, amend, or repeal rules and regulations.

c. Clarity:

The proposed amendments are clear in that they are written so that the persons subject to the rule can easily understand the meaning.

d. Consistency:

The proposed amendment of Rule 315 is in harmony with, and not in conflict with or contradictory to, any state law or regulation, federal law or regulation, or court decisions because Federal Clean Air Act Section 185 requires the imposition of a penalty of $5,000 per ton (adjusted for inflation) on major facilities within ozone non-attainment areas that fail to meet the severe or extreme ozone attainment date unless such major facilities have reduced their ozone precursor emissions by twenty percent (20%) from a baseline amount. The jurisdiction of the AVAQMD is located entirely within the AQMA which failed to meet the one-hour ozone standard on or before 2007. Therefore the AVAQMD is subject to the provisions of Section 185.

e. Non-duplication:

The proposed amendment of Rule 315 does not impose the same requirements as an existing state or federal law or regulation because the Federal Clean Air Act requires the AVAQMD to adopt a rule to implement the requirements of Section 185.

f. Reference:

AVAQMD has the authority pursuant to H&S Code §40702 to adopt, amend, or repeal rules and regulations.

g. Public Notice & Comment, Public Hearing:

Notice for the public hearing for the proposed amendment of Rule 315 will be published August 19, 2011. See Appendix "B" for a copy of the public notice. See Appendix "C" for copies of comments, if any, and AVAQMD responses.

2. Federal Elements (SIP Submittals, Other Federal Submittals).

Submittals to USEPA are required to include various elements depending upon the type of document submitted and the underlying Federal law which requires the submittal. The information below indicates which elements are required for the proposed amendment of Rule 315 and how they were satisfied.

a. Satisfaction of Underlying Federal Requirements:

The amendment of Rule 315 – *Federal Clean Air Act Section 185 Penalty* is subject to all the requirements for a SIP submittal because the AVAQMD will request that Rule 315 be included in the SIP. The criteria for determining completeness of SIP submissions are set forth in 40 CFR Part 51, Appendix V, 2.0.

b. Public Notice and Comment:

Notice for the public hearing for the proposed amendment of Rule 31 will be published August 19, 2011. See Appendix "B" for a copy of the public notice.

c. Availability of Document:

Copies of proposed amended Rule 315 was made available to the public on August 4, 2011 and the accompanying draft staff report will be made available to the public on or before August 12, 2011.

d. Notice to Specified Entities

A copy of proposed amended Rule 315 was made available to all affected agencies, including but not limited to CARB and USEPA on August 4, 2011, and the accompanying draft staff report will be made available to all affected agencies, including but not limited to CARB and USEPA on or before August 12, 2011.

e. Public Hearing:

A public hearing to consider the proposed amendment of Rule 315 has been set for September 20, 2011.

f. Legal Authority to Adopt and Implement:

The AVAQMD has the authority pursuant to H&S Code §40702 to adopt, amend, or repeal rules and regulations and to do such acts as may be necessary or proper to execute the duties imposed upon the AVAQMD.

g. Applicable State Laws and Regulations Were Followed:

Public notice and hearing procedures pursuant to H&S Code §§40725-40728 have been followed. See Section (V)(A)(1) above for compliance with state findings required pursuant to H&S Code §40727. See Section (V)(B) below for compliance with the required analysis of existing requirements pursuant to H&S Code §40727.2. See Section (V)(C) for compliance with economic analysis requirements pursuant to H&S Code §40920.6. See Section (V)(D) below for compliance with provisions of the California Environmental Quality Act (CEQA).

B. WRITTEN ANALYSIS OF EXISTING REQUIREMENTS

H&S Code §40727.2 requires air districts to prepare a written analysis of all existing federal air pollution control requirements that apply to the same equipment or source type as the rule proposed for modification by the district. The proposed amendment of Rule 315 will implement the requirements of Section 185 of the Federal Clean Air Act, and stop potential sanctions being imposed by USEPA as identified in 75 FR 232, January 5, 2010, through the adoption of a non-attainment area fee equivalency strategy. Therefore the preparation of a written analysis of existing pollution control requirements that apply to the same equipment or source type is not required.

C. ECONOMIC ANALYSIS

1. General

Federal Clean Air Act Section 185 requires the imposition of a penalty of $5,000 per ton (adjusted for inflation) on major facilities within ozone non-attainment areas that fail to

meet the severe or extreme ozone attainment date unless such major facilities have reduced their ozone precursor emissions by twenty percent (20%) from a baseline amount. The jurisdiction of the AVAQMD is located entirely within the AQMA which failed to meet the one-hour ozone standard on or before 2007. Therefore the AVAQMD is subject to the provisions of Section 185. The USEPA made a finding of a failure to submit a rule implementing the penalty provisions of Section 185 on January 5, 2010 (75 FR 232) which started a SIP 18 month sanction clock and a 24 month FIP sanction clock. Potential sanctions include an increase in the new source review offset ratio and suspension of federal highway transportation funding.

The AVAQMD originally adopted Rule 315 – *Federal Clean Air Act Section 185 Penalty* on February 15, 2011. The AVAQMD submitted Rule 315 to CARB on March 3, 2011 requesting inclusion in the SIP, and CARB submitted Rule 315 to USEPA on April 22, 2011 as a revision to the SIP. USEPA made a finding of completeness on May 19, 2011, which reset the sanction clock, but not the FIP clock. The AVAQMD is now amending Rule 315 to include additional provisions at the request of USEPA to make the rule approvable and eliminate the possibility of sanctions, up to and including a FIP.

The original version of Rule 315 allowed for aggregating the major facilities emissions in order to show the 20 percent reduction in emissions across the entire non-attainment area. Using this aggregation method, and based on actual emissions to date, the AVAQMD did not expect any facilities to have to pay the penalty.

The proposed amendments will remove the aggregation method, and instead propose a non-attainment fee equivalency strategy. This fee equivalency strategy will establish a "Tracking Account" for those districts that are located wholly, or in part, in the AQMA (AVAQMD, Mojave Desert Air Quality Management District (MDAQMD), and South Coast Air Quality Management District (SCAQMD)). The "Tracking Account" will be credited with actual expenditures of qualified programs designed to fund projects which: are surplus to the SIP for the Federal one-hour ozone standard; have been certified by the APCO, CARB, and the USEPA as being surplus to the SIP; and are designed to result in direct, or to facilitate future, VOC or NO_x reductions within the District from uses as approved by USEPA. The annual applicable expenditures made within the portions of the three districts that are within the AQMA together during a given calendar year shall be referred to as the "Combined AQMA Equivalency Tracking Account" for that calendar year. The annual applicable penalties made within the portions of the three districts within the AQMA during a calendar year shall be referred to as the "Combined AQMA Penalties" for that calendar year. The equivalency determination shall be made by subtracting the Combined AQMA Penalty from the Combined AQMA Equivalency Tracking Account. Any remaining balance greater than zero of the Combined AQMA Equivalency Tracking Account shall be carried over to subsequent years. If the balance of the Combined AQMA Equivalency Tracking Account is less than zero, the APCO shall determine the penalty owed by each facility as a pro rata share.

Under the proposed equivalency method, and based on actual emissions and applicable SIP-surplus revenues, the AVAQMD does not expect any facilities to have to pay the penalty.

2. Incremental Cost Effectiveness

Pursuant to H&S Code §40920.6, incremental cost effectiveness calculations are required for rules and regulations which are adopted or amended to meet the California Clean Air Act requirements for Best Available Retrofit Control Technology (BARCT) or "all feasible measures" to control volatile compounds, oxides of nitrogen or oxides of sulfur.

The proposed amendment of Rule 315 is not subject to incremental cost effectiveness calculations because this rule does not impose BARCT or "all feasible measures".

D. ENVIRONMENTAL ANALYSIS (CEQA)

Through the process described below, it was determined that a Notice of Exemption would be the appropriate CEQA process for the proposed amendment of Rule 315.

1. The proposed amendment of Rule 315 meets the CEQA definition of "project." They are not "ministerial" actions.

2. The proposed amendment of Rule 315 is exempt from CEQA review because Rule 315 is a penalty rule. There is not potential that the amendment might cause the release of additional air contaminants or create any adverse environmental impacts, a Class 8 categorical exemption (14 Cal. Code Reg. §15308) applies.

E. SUPPLEMENTAL ENVIRONMENTAL ANALYSIS

1. Potential Environmental Impacts

The proposed amendment does not have any potential environmental impacts because the rule merely imposes a penalty on major facilities within ozone non-attainment areas that fail to meet the severe or extreme ozone attainment date unless such major facilities have reduced their ozone precursor emissions by twenty percent (20%) from a baseline amount. Therefore, the rule does not have any impact upon emissions of air contaminants.

2. Mitigation of Impacts

N/A

3. Alternative Methods of Compliance

N/A

F. PUBLIC REVIEW

See Staff Report Section (V)(A)(1)(g) and (2)(b), as well as Appendix "B."

VI. TECHNICAL DISCUSSION

A. SOURCE DESCRIPTION

This rule is applicable to any facility within the AQMA which emits or has the potential to emit NO_x or VOCs in an amount sufficient to make it a Major Facility as defined in District Rule 1301. This rule shall be applicable if the AQMA fails to demonstrate attainment of the federal one-hour ambient air quality standard for ozone by 2007. This rule also shall cease to be applicable when the AQMA is designated as attaining either the one-hour or eight-hour national ambient air quality standard for ozone.

B. EMISSIONS

The proposed amendment of Rule 315 does not regulate emissions or impose control requirements. Therefore, there will be no direct impact upon emissions.

Rule 315 specifies calculations that involve specific facility calendar year inventories of actual NO_x and VOC emissions. The proposed rule includes a requirement for the APCO to request each applicable facility inventory in writing each year – this provision does not create an additional emission inventory method or process. Each applicable facility is by definition a federal major source and is therefore subject to all recordkeeping and reporting requirements, including the semi-annual and annual emissions reporting specified in existing federal operating permits as required by District Rule 3003(D). Most applicable facilities are also subject to multiple state annual emission inventory requirements. Each facility annual emission inventory is currently reviewed by the District and State personnel, including myriad quality control and quality assurance reviews. Facility annual emission inventories are used for all regulatory purposes, including permit condition compliance, emissions level triggers, New Source Review, state fees, and local, regional and state planning.

Rule 315 is being amended to include a non-attainment area fee equivalency strategy, as provided by Section 172(e) of the Federal Clean Air Act. Section 172(e) allows for alternative programs that are no less stringent than the mandated Section 185 program. Under USEPA guidance, such programs may be either "fee equivalent" or "emissions equivalent" or a combination of both strategies. This rule amendment proposes a "fee equivalent" program which will recognize funding from fee programs that are surplus to the SIP and are used for air quality improvement projects in the AVAQMD. USEPA guidance requires fees collected under such program be directed towards the reduction of NO_x or VOC emissions. Such funds will be accumulated into a fee equivalency "tracking account" and used to offset the burden otherwise required under the Section 185 penalty collection approach. This "fee equivalency" approach must be used to facilitate pollution reduction efforts, whereas the Federal Clean Air Act does not specify how Section 185 penalty revenues are to be used. Therefore, this "fee

equivalent" strategy will have a greater potential for an air quality benefit than the Section 185 penalty.

C. CONTROL REQUIREMENTS

Rule 315 is a penalty rule, and does not impose any control requirements.

D. PROPOSED RULE SUMMARY

This section gives a brief overview of the proposed amendments in Rule 315.

Subsection (A)(1) has been amended to identify that this rule pertains to the District portion of the AQMA.

Subsection (A)(2)(a) has been modified to differentiate the District portion from the entire AQMA.

Subsection (A)(2)(b) has been modified to clarify the federal action triggering implementation of Rule 315.

Subsection (A)(3)(a) has been modified to remove the multiple facility aggregation exemption.

Subsection (A)(3)(b) has been added to allow use of equivalency demonstration. In case of a shortfall, facilities will be assessed on a pro rata share of the fee.

Subsection (B)(3) definition for "Clean Unit" has been removed at USEPA direction.

Subsection (B)(4) has been modified to extract a separate definition for "District Portion of the AQMA" (now subsection (B)(3)) from the definition for "Southeast Desert Modified Air Quality Maintenance Area." Additionally, this definition defines the entire AQMA pursuant to USEPA direction that the entire AQMA is required to attain the one-hour ozone standard before Section 185 ceases to apply.

Subsection (D)(1)(e) has been removed as it was applicable to "Clean Units" which have been removed from the rule.

Section (E) has been added to provide the equivalency determination. This section requires the APCO to establish a "Tracking Account." Credits and debits will be reconciled annually. Should the balance be positive, funds shall be credited to the next calendar year. Should the fund be negative, facilities will be assessed a pro rata share of the fee.

Subsection (E)(1)(a) has been added to specify which expenditures are SIP-surplus and therefore qualified to be credited towards the "Tracking Account." H&S Code Division 26, Part 5, Chapter 7 (commencing with Section 44200) allows an air district, upon action of its Governing Board to levy a fee upon motor vehicles registered within the district (H&S Code §§44223 and 44225). On July 15, 1997 the AVAPCD (the AVAQMD's predecessor agency) adopted resolution 97-04 to allow the Department of Motor Vehicles (DMV) to continue

collecting the four dollar ($4) vehicle registration fee. On April 19, 2005 the AVAQMD via resolution 05-03 authorized increasing this fee to $6 with the additional two dollars ($2) going to fund lower emission school bus program pursuant to H&S Code 44299.90 et seq. The DMV collects the fees and forwards them on to the District (H&S Code §44227). Administrative costs are limited by statute both for the district and for any use funds disbursed under the program (H&S Code §§44229 and 44233). These fees may not be used for carpool or similar services but may be used for congestion management and transportation control programs (H&S Code §§44235, 44236 and 44237). The funds generated from these fees are commonly referred to as "AB2766 funds." These funds are surplus to the SIP because, as USEPA has asserted both directly and indirectly on many occasions, provisions of the H&S Code are not in and of themselves contained in the SIP unless they are directly submitted and approved by USEPA. The District has not, on any occasion, requested that the District programs supported by these funds be included as a SIP revision. In addition, the District has not claimed emission reductions generated by such funds in any planning document submitted and approved as a SIP revision. To the District's knowledge CARB has not made any similar submission regarding these H&S Code provisions or the programs funded by them.

E. SIP HISTORY

1. SIP History.

Rule 315 – *Federal Clean Air Act Section 185 Penalty* was originally adopted 2/15/2011. It was forwarded to CARB on 3/03/11 with a request that it be submitted as a SIP revision. CARB subsequently submitted the rule to USEPA on 4/22/11. USEPA made a completeness finding on 5/19/2011.

2. SIP Analysis.

USEPA has indicated that the 2/15/2011 version of the rule is only partially approvable in its current format. USEPA has recommended a variety of changes to allow for full approvability. The AVAQMD will be requesting CARB to submit the proposed amendments to Rule 315 – *Federal Clean Air Act Section 185 Penalty*, including USEPA's requested changes, for inclusion in the AVAQMD SIP superseding the prior submission.

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APPENDIX "A"
Rule 315 – Federal Clean Air Act Section 185 Penalty
Iterated Version

The iterated version is provided so that the changes to an existing rule may be easily found. The manner of differentiating text is as follows:

1. Shaded text identifies new or revised language.

2. ~~Lined out t~~ext identifies language which is being deleted.

3. Normal text identifies the current language of the current rule which will remain unchanged by the adoption of the proposed amendments.

4. *Italicized text* identifies explanatory material that is not part of the proposed language.

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(**Adopted:** 02/15/11; **Amended**: mm/dd/yy)

Rule 315
Federal Clean Air Act Section 185 Penalty

(A) General

(1) Purpose

The purpose of this rule is to implement the mandatory penalty pursuant to Section 185 of the Federal Clean Air Act (42 U.S.C. §7511d) within the District portion of the Southeast Desert Modified Air Quality Maintenance Area (AQMA). *[Note: "District" is defined in District Rule 1301(X)]*

(2) Applicability

(a) This rule is applicable to any Facility within the District portion of the AQMA which emits or has the potential to emit nitrogen oxides (NO_x) or ~~volatile organic compounds~~Volatile Organic Compounds (VOC) in an amount sufficient to make it a Major Facility as defined in District Rule 1301. *[Modified to differentiate District portion from entire AQMA pursuant to USEPA direction that entire AQMA is required to attain standard before Section 185 ceases to apply.]*

(b) This rule shall be applicable if ~~the AQMA fails to demonstrate attainment of the~~ required to be implemented by the United States Environmental Protection Agency (USEPA) for failure to attain the federal one-hour ambient air quality standard for ozone ~~by 2007~~.

(c) This rule shall cease to be applicable when the AQMA is designated as attaining either the one-hour or eight-hour national ambient air quality standard for ozone.

(3) Exemption

(a) No facility otherwise subject to this rule shall be required to remit a Federal Clean Air Act Section 185 penalty during any calendar year in which ~~all Facilities subject to such penalties within~~ the ~~AQMA cumulatively emit~~facility emits verified actual emissions equal to or less than 80 percent of ~~their~~its combined Baseline Emissions amounts. *[Modified for clarity.]*

(b) No facility otherwise subject to this rule shall be required to remit a Federal Clean Air Act Section 185 penalty during any calendar year in which a complete

fee equivalency demonstration has been made in accordance with the procedures contained in Section (E) below.*[Provision added to allow use of equivalency demonstration. Note: in case of a shortfall facilities will be assessed a pro rata share of the fee]*

(B) Definitions

For the purposes of this rule the definitions contained in District Rule 1301 shall apply unless otherwise defined below.

(1) "Actual Emissions" ~~–~~ Actual total facility calendar year emissions to atmosphere of each of NO_x and VOC reported to the District through a verified emission inventory. Fugitive Emissions from a Facility shall not be included in the calculation unless the Facility belongs to one of the twenty-seven major source categories listed under subsection (2) of the definition of "major source" in 40 CFR 51.165(a)(1)(iv)(C).

(2) "Baseline Emissions" ~~–~~ Baseline emissions are calculated for each of NO_x and VOC Facility emissions to the atmosphere for which the source is classified as a Major Facility, in accordance with Section (D) below.

~~(3) "Clean Unit" A Permit Unit that is complying with permit conditions that have been determined to meet the definition of Best Available Control Technology and/or Lowest Achievable Emission Rate for NOx and VOC.~~

(3) "District Portion of the AQMA" - The entirety of the District is located within the AQMA. *[Moved from former (B)(4)]*

(4) "Southeast Desert Modified Air Quality Maintenance Area (AQMA)" – ~~The area~~That portion of the Metropolitan Los Angeles Air Quality Control Region as described in 40 CFR §81.~~167. The entirety of the District is within the Southeast Desert Modified Air Quality Maintenance Area.~~305 (Ozone one-hour standard). *[Modified to define entire AQMA pursuant to USEPA direction that entire AQMA is required to attain standard before section 185 ceases to apply.]*

(5) "State Implementation Plan (SIP)" – The federally approved body of regulations representing control strategies to minimize air pollution adopted by state and local air pollution control agencies in compliance with Section 110 of the Clean Air Act, 42 U.S.C. §7410.

(C) Requirements

(1) Verification of Actual Emissions

~~(a)~~ Any facility subject to the provisions of this rule shall, upon written request by the APCO, submit a verified inventory of Actual Emissions.

(2) Collection of Penalty

~~(a)~~ Beginning in the year this rule is adopted, the APCO shall, for each facility subject to the provisions of this rule, notify the facility by mail of the penalty amount due and payable and the date the penalty is due. If the penalty is not paid by the due date specified in the notice, the subject facility permits will be suspended and a suspension notification will be made by mail. A suspended permit may be reinstated by payment of the applicable penalty.

(D) Calculations

(1) Baseline Emissions for a Facility shall be calculated as specified below:

(a) For a Facility that began operation prior to 2007, the Baseline Emissions shall be the lower of ~~the~~:

i. The Actual Emissions during 2007; or ~~the~~
ii. The amount of emissions allowed by permit condition.

(b) For a facility that began operation during 2007, the Baseline Emissions shall be the lower of:

i. The amount of emissions allowed by permit condition~~,~~; or
ii. The Actual Emissions from the operation period extrapolated over calendar year 2007.

(c) For a facility that begins operation after 2007, the Baseline Emissions shall be the amount allowed under the applicable implementation plan.

(d) For an irregular, cyclical or otherwise significantly varying Facility that began operation prior to 2003, Baseline Emissions may be calculated as the average of the verified Actual Emissions for any two years of the years 2003 through 2007 that the APCO determines are the most representative of operation, if the facility demonstrates in writing to the satisfaction of the APCO and USEPA that they are not a regular Facility.

~~(e) For a facility that includes a Clean Unit, Baseline Emissions may be calculated subsection a through d above excluding the emissions from all Clean Units, if the Facility demonstrates in writing to the satisfaction of the APCO and that the Facility includes a Clean Unit.~~ *[Removed pursuant to USEPA direction.]*

(2) Penalty Determination

(a) The penalty for a Facility shall be $5,000, adjusted pursuant to subsection (D)(2)(b), per ton of Actual Emissions during a calendar year that exceed 80~~%~~ percent of the baseline emissions, as specified below:

$$P = 5000 \times \left[E_a - \left(0.8 \times E_b\right)\right] \times C$$

Where:

P	=	Penalty (in dollars)
E_a	=	Actual Emissions
E_b	=	Baseline Emissions
C	=	Percent change in the Consumer Price Index as determined by subsection (D)(2)(b)

(b) The change in the Consumer Price Index shall be determined in accordance with the provisions of 42 U.S.C. §7511d(b)(3) (Federal Clean Air Act §185(b)(3)) and 42 U.S.C. §7661a(b~~0~~)(3)(B)(v) (Federal Clean Air Act §502(b)(3)(B)(v)).

(E) Equivalency Determination

(1) Federal Clean Air Act Section 185 Equivalency "Tracking Account"

(a) The APCO shall establish and maintain a Federal Clean Air Act Section 185 Equivalency "Tracking Account." Such Tracking Account shall be credited with actual expenditures occurring in calendar years beginning the calendar year in which this rule is adopted on qualified programs that are designed to fund projects which:

(i) Are surplus to the SIP for the Federal one-hour Ozone standard; and

(ii) Have been certified by the APCO, the Executive Officer of CARB or USEPA as being surplus to the SIP; and

(iii) Are designed to result in direct, or to facilitate future, VOC or NO_x reductions within the District from uses as approved by USEPA.

(b) Expenditures credited to the Federal Clean Air Act Section 185 Equivalency "Tracking Account" need not actually be held by or disbursed by the District provided the source of the expenditures is an eligible project in a qualified program.

(c) Expenditures shall be credited on a dollar for dollar basis and shall not be discounted due to the passage of time.

(d) If expenditures credited for a given year are greater than those necessary for the demonstration of equivalency for that year the surplus may accumulate and be used as needed to demonstrate equivalency in subsequent years.

[Derived from SCAQMD 317(c)(1).]

(2) AQMA Accounting

(a) The APCO shall annually request an accounting of applicable expenditures, as defined in this section, made within the portions of the AQMA that are under the jurisdiction of the Mojave Desert Air Quality Management District and the South Coast Air Quality Management District from the APCO or Executive Officer or each respective district.

(b) The APCO shall annually request an accounting of applicable penalties, as determined in subsection (D)(2), collected within the portions of the AQMA that are under the jurisdiction of the Mojave Desert Air Quality Management District and the South Coast Air Quality Management District from the APCO or Executive Officer or each respective district.

(c) The annual applicable expenditures made within the portions of the three districts that are within the AQMA together during a given calendar year shall be referred to as the "Combined AQMA Equivalency Tracking Account" for that calendar year.

(d) The annual applicable penalties made within the portions of the three districts that are within the AQMA together during a given calendar year shall be referred to as the "Combined AQMA Penalties" for that calendar year.

(3) Equivalency Determination

(a) Beginning the year this rule is adopted the APCO shall aggregate the penalties for each facility subject to this rule and calculated pursuant to Section (D) above.

(b) The APCO shall also make an annual determination of equivalency according to the following formula:

$$B_f = (B_i + E) - AP$$

Where:

B_i	=	The initial balance of the Federal Clean Air Act Section 185 Combined AQMA Equivalency "Tracking Account" as existing at the beginning of the calendar year for which the equivalency determination is being made.
E	=	The expenditures credited to the Federal Clean Air Act Section 185 Combined AQMA Equivalency "Tracking Account" during the calendar year for which the equivalency determination is being made.
AP	=	The Combined AQMA Penalty amount determined by the APCO pursuant to subsections (E)(2)(b) and (E)(2)(d) above.
B_f	=	The balance of the Federal Clean Air Act Section Combined AQMA Equivalency Tracking Account to be carried over into the subsequent calendar year as B_1 if such amount is greater than zero. The remaining penalty to be allocated to applicable Facilities pursuant to subsection (E)(5) below if such amount is less than

zero.

[Derived from SCAQMD 317(c)(2-4)]

(4) Reporting Requirements

(a) Commencing the year this rule is adopted and annually thereafter the APCO shall file a report with CARB and USEPA that contains the following:

(i) A listing of all Facilities subject to this rule and the potential penalty as calculated pursuant to Section (D) above for the prior calendar year;

(ii) The aggregated penalty amount for the prior calendar year;

(iii) The Combined AQMA Penalties for the prior calendar year;

(iv) The balance of the Federal Clean Air Act Section 185 Combined AQMA Equivalency Tracking Account, if any, at the beginning of the prior calendar year;

(v) A listing of all qualified programs and expenditures associated with each program that were credited into the Federal Clean Air Act Section 185 Combined AQMA Equivalency Tracking Account during the prior calendar year;

(vi) The results of the calculation pursuant to subsection (E)(2) above; and

(vii) The results of the remaining penalty allocation calculation pursuant to subsection (E)(4) if any.

[Derived from SCAQMD 317(c)(5)]

(5) Partial Equivalency Determination and Calculation of Penalty

(a) If the balance of the Federal Clean Air Act Section 185 Combined AQMA Equivalency Tracking Account is less than zero in any particular year then the APCO shall determine the penalty amount owed by each Facility as follows:

$$P_{ry} = P_y \times \left(\frac{|B_{fy}|}{AP_y} \right)$$

Where:

P_{ry}	=	Residual penalty for calendar year y
P_y	=	Penalty amount for calendar year y as calculated in subsection (D)(2)
$\|B_{fy}\|$	=	Absolute value of negative balance of equivalency tracking account for calendar year y as calculated in subsection (E)(2)

AP_y = Sum of all P_y as calculated in subsection (D)(2)

(b) The APCO shall thereafter notify the facility by mail of the penalty amount due as calculated on a facility basis in (E)(5)(a) and payable and the date the penalty is due. If the penalty is not paid by the due date specified in the notice, the subject facility permits will be suspended and a suspension notification will be made by mail. A suspended permit may be reinstated by payment of the applicable penalty.

See SIP Table at http://www.avaqmd.ca.gov/Modules/ShowDocument.aspx?documentid=921

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APPENDIX "B"
PUBLIC NOTICE DOCUMENTS

(Certified copy to be included when available)

1. Draft Proof of Publication for Notice of Public Hearing – Antelope Valley Press

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NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Governing Board of the Antelope Valley Air Quality Management District (AVAQMD) will conduct a public hearing on September 20, 2011 at 10:00 A.M. to consider the proposed amendment of Rule 315 – *Federal Clean Air Act Section 185 Penalty*.

SAID HEARING will be conducted in the Governing Board Chambers located at the AVAQMD offices 43301 Division Street, Suite 206, Lancaster, CA 92525-4649 where all interested persons may be present and be heard. Copies of the proposed amendment of Rule 315 – *Federal Clean Air Act Section 185 Penalty* and the Staff Report are on file and may be obtained from the Clerk of the Governing Board at the AVAQMD Offices. Written comments may be submitted to Bret Banks, Operations Manager at the above office address. Written comments should be received no later than September 19, 2011 to be considered. If you have any questions you may contact Tracy Walters at (760) 245-1661 extension 6122 for further information.

The proposed amendment Rule 315 – *Federal Clean Air Act Section 185 Penalty* will implement the requirements of Section 185 of the Federal Clean Air Act, and to stop potential sanctions being imposed by the USEPA as identified in 75 FR 232, January 5, 2010, through the adoption of a non-attainment area fee equivalency strategy.

Pursuant to the California Environmental Quality Act (CEQA) the AVAQMD has determined that a Categorical Exemption (Class 8 – 14 Cal. Code Reg §15308) applies and has prepared a *Notice of Exemption* for this action.

Crystal Bates
Deputy Clerk of the Board
Antelope Valley Air Quality Management District

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APPENDIX "C"
PUBLIC COMMENTS AND RESPONSES

1. Transmittal of EPA Rule Review Comments, February 02, 2011
2. CARB Preliminary Draft PTSD comments on MDAQMD Preliminary Draft Rule 315, June 23, 2011 (Preliminary comments for the MDAQMD rule included as they are pertinent to AVAQMD Rule 315 due to the similarity of both rules)

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Comment 1

Alan De Salvio

From: Steckel.Andrew@epamail.epa.gov
Sent: Wednesday, February 02, 2011 8:32 AM
To: Alan De Salvio; mguzzett@arb.ca.gov
Cc: kkarpero@arb.ca.gov; Bowen, La Ronda@ARB; Wong.Lily@epamail.epa.gov; Drake.Kerry@epamail.epa.gov
Subject: EPA Comment on Antelope Rule 315

United States Environmental Protection Agency

Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

February 02, 2011

Transmittal of EPA Rule Review Comments

To: Alan De Salvio, Antelope Valley Air Quality Management District
adesalvio@mdaqmd.ca.gov

Mike Guzzetta, California Air Resources Board
mguzzett@arb.ca.gov

From: Andrew Steckel, Rulemaking Office Chief
steckel.andrew@epa.gov

Re: AVAQMD Proposed Rule 315; "Clean Air Act Section 185 Penalty" draft rule dated January 14, 2011

We are providing comments based on the proposed rule identified above. Clean Air Act (CAA) §185 requires states with ozone nonattainment areas classified as Severe or Extreme to develop a SIP fee rule if an area fails to attain the ozone standards by its required attainment date. While we have not performed an exhaustive review, we have noted several provisions of the proposed rule which are not consistent with the requirements of CAA §185. For example, the rule at provision (D)(1)(e) would allow a source to exclude from the calculation of baseline emissions the emissions from a "clean unit." (1) Also, provision (A)(3) would result in no fees assessed in any year if the total actual emissions from all sources are less than 80% of the combined baseline emissions of all sources. CAA §185 requires that fees be assessed on individual sources if the source's emissions are greater than 80% of its baseline emissions. (2)

EPA has developed "Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS" (January 5, 2010), which states that an alternative program may be acceptable if the state can demonstrate, consistent with the principles in CAA §172(e), that the alternative fee program as a whole is not less stringent than a CAA §185 program would be for the area. We understand that the California Air Resources Board (CARB) is working on such a demonstration for an alternative program. Before adopting your proposed rule, we encourage you to work with CARB to ensure that, along with any needed CAA §172(e) demonstration, it is adequate to fulfill CAA §185 requirements. (3)

Please direct any questions about our comments to me at (415) 947-4115 or to Lily Wong at (415) 947-4114.

District Response to Comment 1

1. Allowance for a “Clean Unit” has been removed from the rule.
2. The rule has been modified to remove the multiple facility aggregation exemption.
3. A fee equivalency strategy has been added to the rule consistent with FCAA Section 172(e). See Section (E) of the rule, subsections (E)(1) through (E)(5).

Comment 2

PRELIMINARY DRAFT

PTSD comments on MDAQMD Preliminary Draft Rule 315, dated 6/23/11

Federal Clean Air Act Section 185 Penalty

Comments

1. There are two sections E(3). For the purposes of this discussion, the sub-parts of Section E are assumed to be re-numbered as shown below.

(E)(1) Federal Clean Air Act Section 185 "Tracking Acount"

1 → (E)(2) Basinwide Accounting

(E)(3) Equivalency Determination

(E)~~(3)~~(4) Reporting Requirements

(E)~~(4)~~(5) Partial Equivalency Determination and Calculation of Penalty

2. The rule does not have procedures for establishing the "aggregated penalty amount" (AP) referenced in section (E)(3)(b)

To address this, we recommend adding sub-parts (E)(2)(a) and (E)(2)(b) as shown below, and re-numbering existing sub-part (E)(2)(a) and subsequent sub-parts accordingly.

Proposed section (E)(2)(a):

2 → The APCO shall annually request a penalty determination, calculated as specified in section (D), for subject facilities located within the portions of the AQMA that are under the jurisdiction of the Antelope Valley Air Quality Management District and the South Coast Air Quality Management District, from the APCO or Executive Officer of each respective District.

Proposed section (E)(2)(b):

The AQMA aggregated penalty amount shall be the section D penalties calculated by the APCO, plus those reported by the Executive Officer of the Antelope Valley Air Quality Management District and the South Coast Air Quality Management District pursuant to section (E)(2)(a).

3

3. Change the reference in the section (3)(b) formula for the determination of equivalency as shown below.

AP = The aggregated penalty amount determined by the APCO pursuant to subsection ~~(E)(2)(a)~~ (E)(2)(b) above.

4

4. Change references to prior sections (E)(2)(a)-(b) throughout.

District Response to Comment 2

1. Section (E) has been correctly renumbered.
2. Requested sections have been added. See subsection (E)(2)(b) and (E)(2)(d). Subsections have been renumbered accordingly.
3. Cross reference has been corrected.
4. Cross references have been corrected.

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APPENDIX "D"
CALIFORNIA ENVIRONMENTAL QUALITY ACT DOCUMENTATION

(Certified copy to be included as available)

1. Draft Notice of Exemption – Los Angeles County

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NOTICE OF EXEMPTION

TO: Los Angeles County Clerk
12400 E. Imperial Hwy, #1001
Norwalk, CA 90650

FROM: Antelope Valley
Air Quality Management District
43301 Division Street, Suite 206
Lancaster, CA 93535-4649

_X_ AVAQMD Clerk of the Governing Board

PROJECT TITLE: Amendment of Rule 315 – *Federal Clean Air Act Section 185 Penalty*

PROJECT LOCATION – SPECIFIC: Los Angeles County portion of the Mojave Desert Air Basin.

PROJECT LOCATION – COUNTY: Los Angeles County

DESCRIPTION OF PROJECT: The proposed amendment of Rule 315 is necessary to implement the requirements of Section 185 of the Federal Clean Air Act, and to stop potential sanctions being imposed by the USEPA as identified in 75 FR 232, January 5, 2010, through the adoption of a non-attainment area fee equivalency strategy.

NAME OF PUBLIC AGENCY APPROVING PROJECT: Antelope Valley AQMD

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT: Antelope Valley AQMD

EXEMPT STATUS (CHECK ONE)

Ministerial (Pub. Res. Code §21080(b)(1); 14 Cal Code Reg. §15268)
Emergency Project (Pub. Res. Code §21080(b)(4); 14 Cal Code Reg. §15269(b))
_X_ Categorical Exemption – Class 8 (14 Cal Code Reg. §15308)

REASONS WHY PROJECT IS EXEMPT: The proposed amendment of Rule 315 is exempt from CEQA review because Rule 315 is a penalty rule. There is not potential that the amendment might cause the release of additional air contaminants or create any adverse environmental impacts, a Class 8 categorical exemption (14 Cal. Code Reg. §15308) applies.

LEAD AGENCY CONTACT PERSON: Bret Banks **PHONE:** (661) 723-8070

SIGNATURE: _____ **TITLE:** Operations Manager **DATE:** September 20, 2011

DATE RECEIVED FOR FILING:

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APPENDIX "E"
BIBLIOGRAPHY

The following documents were consulted in the preparation of this staff report and the proposed amendment of Rule 315:

1. 42 U.S.C. 7511d (Federal Clean Air Act Section 185)
2. 42 U.S.C. 7511d (Federal Clean Air Act Section 172(e))
3. Guidance to Developing Fee Programs Required by the Clean Air Act Section 185 for the 1-hour Ozone NAAQS (January 5, 2010)
4. SCAQMD Rule 317 – Clean Air Act Non-Attainment Fees, Amended February 4, 2011
5. SCAQMD Proposed Amended Rule 317 Board Item Documents, February 4, 2011
6. SJVUAPCD Rule 3170 – Federally Mandated Ozone Nonattainment Fee, Amended May 19, 2011
7. SMAQMD Rule 307 Clean Air Act Fees, Adopted September 26, 2002

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